

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS RAYDEVAN WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

November 17, 2005

No. 255876

Saginaw Circuit Court

LC No. 03-022908-FC

Before: Donofrio, P.J., and Zahra and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree home invasion, MCL 750.110a(2), assault with intent to commit murder, MCL 750.83, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

Defendant first argues that the trial court erred in failing to instruct the jury on assault with intent to do great bodily harm less than murder as a necessarily lesser included offense of assault with intent to murder. We disagree.

A court is to instruct on an inferior offense if it is necessarily included in the greater offense and if a rational view of the evidence supports the instruction. *People v Nickens*, 470 Mich 622, 626; 685 NW2d 657 (2004). “Necessarily included lesser offenses are offenses in which the elements of the lesser offense are completely subsumed in the greater offense.” *Id.* If the inferior offense is a necessarily included lesser offense, whether the instruction on the lesser offense is required turns on whether “the charged greater offense requires the jury to find a

disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it.” *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). A rational view of the evidence supports an instruction on a necessarily included lesser offense when the differing element is sufficiently disputed as to allow a jury to consistently find the defendant not guilty of the charged offense but guilty of the lesser offense. *People v Steele*, 429 Mich 13, 20; 412 NW2d 206 (1987), overruled in part on other grounds *Cornell*, *supra* at 357-358.

Recently, this Court concluded that assault with intent to do great bodily harm is a necessarily included lesser offense of assault with intent to commit murder. *People v Brown*, 267 Mich App 141, 150-151; 703 NW2d 230 (2005). Although assault with intent to do great bodily harm is a necessarily included lesser offense of assault with intent to commit murder, we conclude that a rational view of the evidence did not support giving the instruction in this case. Evidence presented at trial showed that at least seven shots were fired at the victim and the victim was hit twice. Medical testimony indicated that if the shot the victim received in her chest had hit her an inch over, it could have hit her heart or lung, increasing the chance of the shot being fatal. Further, the intent of the shooter was never in dispute at trial. Defendant argued that he was not at the scene of the crime and presented alibi witnesses. His entire defense was based on the theory that another person committed the crimes. The trial court did not err in refusing to give the instruction on assault with intent to commit great bodily harm less than murder because such an instruction would not have been supported by a rational view of the evidence. Moreover, upon review of the entire record, it does not affirmatively appear that any claimed instructional error was more probable than not outcome determinative. *Cornell*, *supra* at 364.

Defendant next argues that the prosecutor committed misconduct in his cross-examination of defendant about defendant’s prior contacts with the police. We disagree. Defendant preserved this issue by objecting to the line of questioning at trial. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). We review preserved claims of prosecutorial misconduct de novo. *People v Abraham*, 256 Mich App 265, 272; 662 NW2d 836 (2003).

When reviewing claims of prosecutorial misconduct, a prosecutor’s remarks are examined in context to determine whether they denied the defendant a fair trial. *People v Bahoda*, 448 Mich 261, 267; 531 NW2d 659 (1995). “[O]therwise improper remarks by the prosecutor might not require reversal if they respond to issues raised by the defense.” *People v Callon*, 256 Mich App 312, 330; 662 NW2d 501 (2003). The remarks are also to be examined in relation to the evidence that was presented at trial. *Id.* Additionally, when considering cross-examination, “the scope of cross-examination is a matter left to the sound discretion of the trial court, with due regard for a defendant’s constitutional rights.” *People v Blunt*, 189 Mich App 643, 651; 473 NW2d 792 (1991).

We conclude that the prosecutor’s cross-examination of defendant in this case was proper. On direct examination, defendant testified that he misinformed the police that he was in Grand Rapids at the time of the crime because he was not used to being questioned by the police

and was nervous. To impeach defendant, the prosecutor questioned him about his prior contacts with the police. The trial court did not abuse its discretion in allowing this type of cross-examination when defendant opened the door to it.<sup>1</sup>

Defendant next argues that the trial court erred in allowing the admission of a letter allegedly written by defendant and received by a witness, Karl Ray. Defendant argues that the letter was not properly authenticated. We disagree. We review evidentiary issues for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002).

“MRE 901 requires identification or authentication of items by introduction of evidence ‘sufficient to support a finding that the matter in question is what its proponent claims.’” *People v Martin*, 150 Mich App 630, 637; 389 NW2d 713 (1986), quoting MRE 901. MRE 901(b)(4) allows a document to be authenticated by “appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with other evidence.” We conclude that the trial court did not abuse its discretion when it found that the letter was authenticated as being written by defendant from its contents. Ray testified that he received the letter when both he and defendant were in the Saginaw County Jail. The letter mentioned names, nicknames, articles of clothing related to the crime, and events that few at the jail besides defendant and Ray would know. The letter also mentioned that a response should be sent to the jail cell that held defendant. Based on this evidence we conclude the trial court did not abuse its discretion by admitting the letter.

Defendant argued that the letter was inadmissible because the letter was not in defendant’s handwriting and the information used to identify him as the writer would also support Ray being the writer. However, defendant’s arguments go to the weight of the evidence, not its admissibility. The letter needed to “only meet the minimum requirements for admissibility. Beyond that, our system trusts the finder of fact to sift through the evidence and weigh it properly.” *People v Berkey*, 437 Mich 40, 52; 467 NW2d 6 (1991) (footnote omitted).

Defendant next argues that he is entitled to resentencing based on the United Supreme Court’s decision in *Blakely v Washington*, 542 US 296; 124 S Ct 2531, 2536; 159 L Ed 2d 403 (2004). However, a majority of the Justices of our Supreme Court in *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004), stated that *Blakely* does not affect guidelines scoring in Michigan to set a defendant’s minimum sentence. See *id.* at 730-731 n 14 (Taylor, J., joined by Markman, J.), 741 (Cavanagh, J.), 744 (Weaver, J.). This Court has treated this determination in *Claypool* as binding precedent. *People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004), lv gtd 472 Mich 881 (2005). Thus, we reject defendant’s argument regarding *Blakely*.

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<sup>1</sup> Defendant also argues that the prosecutor’s cross-examination of another defense witness improperly implied that defendant was involved in a gang. But defendant did not present this issue in his statement of the question presented, and therefore we may decline to review the issue. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). Regardless, defendant did not object to the questioning, and he has not shown that a curative instruction could not have cured any alleged prejudice that may have resulted from these questions. *Callon, supra* at 329-330.

Defendant finally argues that he was denied his right to a speedy trial. We disagree. This Court reviews a speedy trial claim de novo, as it is a constitutional issue. *People v Holzter*, 255 Mich App 478, 492; 660 NW2d 405 (2003). However, a trial court's findings of fact are reviewed for clear error. *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997).

"A criminal defendant has a constitutional and statutory right to a speedy trial." *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000), citing US Const, Ams VI and XIV; Const 1963, art 1, § 20; MCL 768.1. The right to a speedy trial "ensures that a guilty verdict results only from a valid foundation in fact." *People v Cain*, 238 Mich App 95, 111-112; 605 NW2d 28 (1999). Courts are to balance four factors in determining if a defendant has been denied the right to a speedy trial, (1) the length of the delay, (2) the reasons for the delay, (3) whether the defendant asserted the right to a speedy trial, and (4) prejudice to the defendant because of the delay. *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972); *People v Hill*, 402 Mich 272, 283; 262 NW2d 641 (1978).

We conclude that defendant was not denied his right to a speedy trial. There was a delay of 396 days from defendant's arrest until the trial began. One hundred and seventy-five days of the delay were due to defendant's requests for adjournments of the trial. The prosecutor only caused seventy days delay with his request for an adjournment. The remaining delay was due to the inherent delay in the court system. Although this delay is attributed to the prosecutor, it is given only minimal weight. *Gilmore, supra* at 460. Also, defendant did not assert his right to a speedy trial until more than ten months after his arrest.

Further, defendant has not shown that he was prejudiced by the delay. Defendant argues that the delay caused two witnesses that would undermine Ray's credibility in his testimony about the letter to become unavailable. However, it does not appear from the trial court record that either of these witnesses was ever on any of defendant's witness lists. Additionally, there was evidence, besides Ray's testimony and the letter, that supported the jury's findings in this case. The victim positively identified defendant as one of the people she saw in her home the night of the break-in and shooting. There was also DNA evidence that suggested that defendant was present at the crime scene. Because of the other evidence of defendant's guilt and defendant's failure to show that he attempted to locate the witnesses at the time of trial but could not find them, we conclude that defendant has not shown that he was prejudiced by any delay in the trial. In sum, defendant's right to a speedy trial was not violated.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Brian K. Zahra  
/s/ Kirsten Frank Kelly